

DEFUNCT AIR JAMAICA PENSION FUND
MEETING OF BENEFICIARIES
MONTEGO SUITE, LE MERIDIEN PEGASUS HOTEL
WEDNESDAY MAY 2, 2001- 5:30 P.M.
AGENDA

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| 1. ARRIVALS & REFRESHMENTS | 5:30 p.m |
| 2. WELCOME | 6:00 p.m |
| 3. INTRODUCTION OF TRUSTEES & LEGAL ADVISOR | 6: 02 p. m |
| 4. UPDATE FROM TRUSTEES .. | 6.03 p.m |
| 5. QUESTION/ANSWER, DISCUSSION | 6:20 p.m |
| 6. SUMMARY & FOLLOW-UP | 6:55 p.m |
| 7. END | 7:00 p.m |

**DEFUNCT AIR JAMAICA PENSION FUND
TRUSTEES UPDATE TO BENEFICIARIES
WEDNESDAY MAY 2, 2001**

1.0 BACKGROUND

- 1.1 As a result of the legal action brought by representatives of the former members of the Defunct Air Jamaica Pension Fund against the Attorney General of Jamaica et al., the Judicial Committee of the Privy Council on 29 April 1999 ordered, among other things, that the surplus of the defunct Air Jamaica Pension Fund attributable to the contributions made by Air Jamaica employees, should be immediately repaid to the Trustees for distribution to the beneficiaries. 1.2 The re-payment was ordered in accordance with an undertaking by the Government of Jamaica to replenish the surplus, if so ordered by the courts. 1.3 The Privy Council also ordered that interest be applied and compounded annually at the rate of 29.47%. Interest accrues daily on the surplus until repaid.

2.0 APPOINTMENT OF TRUSTEES

- 2.1 On July 17, 2000, the Supreme Court of Jamaica appointed CIBC Trust & Merchant Bank Jamaica Ltd., represented by Raymond Campbell, together with Joy Charlton and Ian Blair as Trustees of the Resulting Trust following the ruling of the Judicial Committee of the Privy Council. 2.2 The Trustees have held 14 meetings to date. Meetings are now held fortnightly.

3.0 MANDATE & DUTIES OF THE TRUSTEES

- 3.1 In keeping with the Privy Council Judgment, the Trustees are required to effect the expeditious and accurate repayment of the sums to which each contributing employee is entitled.
- 3.2 Other duties of the Trustees include: the preparation and provision of accounts and reports of their activities; and generally, to keep contributing employees informed of all developments through updates on the Trustees' Website, press releases, media advertisements or by any other method as is practicable or ordered by the courts.
- 3.3 In order to assist them in the performance of their duties, the Trustees have retained the professional services of the following: PricewaterhouseCoopers (Chartered Accountants) Watson Wyatt & Duggan (Consulting Actuaries) Dunn Cox Orrett & Ashenheim (Attorneys-at-Law)
- 3.4 The Trustees, with the assistance of their advisors, have been working assiduously to extract all needed information from the Ministry of Finance, Income Tax Department, Life of Jamaica Limited (the former Pension Fund managers) Air Jamaica Limited and other relevant sources.
- 3.5 The Trustees and their advisors have had several meetings and have exchanged correspondence with a high level team from the Ministry of Finance, headed by the Minister of Finance or his advisor, Mr. Keith Senior. The meetings were held primarily to

discuss the method of determination of the surplus and to obtain the necessary information.

4.0 DETERMINATION OF SURPLUS ATTRIBUTABLE TO BENEFICIARIES

- 4.1 The Trustees have been advised by their consultants that the surplus attributable to the beneficiaries as at 30 April 2001, including interest, is J\$1,445,693,997.00.
- 4.2 Interest continues to accrue daily in the amount of J\$1,139,644.70.
- 4.3 By letter dated April 11, 2001, the Trustees, through their attorneys-at law, made formal demand on the Government for the immediate repayment of the surplus as at 31 March 2001 and the daily interest at the rate stated above.
- 4.4 The Ministry of Finance, by letter dated April 11, 2001, which had crossed ours of the same date, offered repayment of J\$927,214,746.34 (to be adjusted for taxed costs and income tax) in full and final settlement. That letter also set out their methodology to determine the surplus, which they had discussed with us in previous meetings and which we had rejected. Our letter of April 11 had indicated clearly why their methodology was unacceptable.
- 4.5 Based on the above, there are presently two basic issues on which the Trustees differ with the Ministry in calculating the surplus.
- 4.6 The first issue concerns the rate of interest to be applied.
 - 4.6.1 In a letter dated 28 November 2000, the Ministry of Finance had verified that, "the applicable rate of interest as prescribed by the court is 29.47%, compounded annually."
 - 4.6.2 However, the Ministry's legal advisor stated subsequently that it was his opinion that the rate referred to in the Privy Council's Judgment was in fact the average of the Treasury bill rates for 1994, 1995 and 1996 and that, therefore, the applicable rate of interest should also include the average of the Treasury bill rates through 2001.
 - 4.6.3 The Trustees' view is that the Privy Council's Judgment is clear in its reference to the rate used by the Court of Appeal: That rate is 29.47%. The Privy Council Judgment does not refer to the method of calculation used by the Court of Appeal nor does it refer to using an average of Treasury bill rates until the date of repayment.
 - 4.6.4 The Privy Council Judgment also states that the amount of the surplus attributable to the contribution made by members "should be forthwith repaid to the Trustees." This Judgment was delivered on 29 April 1999. Two years have passed and no steps have been taken to repay the Judgment or to identify and separate funds for repayment. In effect, the Pension Fund's beneficiaries are being asked to bear the costs of this delay, as well as the loss arising from inflation.
 - 4.6.5 The Trustees have advised the Ministry that they are not in a position to accept a variation in the interest rate, as they are obliged to carry out their mandate in strict

compliance with the Privy Council's Judgment, (particularly where such compliance is detrimental to the beneficiaries).

- 4.7 The second issue concerns the ratio of employer and employees' contributions.
- 4.7.1 In determining the surplus applicable, the Ministry has apportioned a ratio of 56% to the employer's contributions and 44% to employees' contributions.
- 4.7.2 However, this does not take into account the unpaid employer's contributions of J\$22,118,021.00, an obligation which the Government of Jamaica had already accepted as owing and which represents the employer's matching contribution to the Pension Fund outstanding as at 19 June 1994. Accordingly, this amount has been deducted from the employer's contributions, resulting in the reversal of the ration allocation as stated below.
- 4.7.3 The Trustees have advised the Ministry that the effect of this unpaid sum can only be to reverse the ratio such that the employer's contribution would be 44.06% and the employees' contribution would be 55.94% and that they have factored this ratio into their calculations, (subject to information being sought from Life of Jamaica).
- 4.7.4 The Trustees believe that they are on very firm ground for this conclusion based on the Privy Council ruling and on the fact that contributions cannot be made after the fact to a defunct Fund.

5.0 DEMAND FOR PAYMENT

- 5.1 On 25 April 2001, the Trustees through their attorneys-at-law, wrote to the Ministry of Finance rearming their position that the method used by the Ministry of Finance in calculating the surplus was unacceptable. They also advised the Minister that they stood by their previous demand for the payment of the surplus, which as at 30 April stood at J\$1,445,693.997.00
- 5.2 However, in that letter, the Trustees demanded that since the sum of J\$927,214,746.34 was admitted by the Ministry as owing to the members of the Defunct Pension Fund, this sum be immediately paid to the Trustees as an interim payment, without prejudice, until the issue of methodology has been resolved.
- 5.3 This would have the advantage of placing the Trustees in a position to make an interim payment to beneficiaries of the Defunct Pension Fund. It would also reduce the interest burden on the Government, which is accumulating at over J\$1 million a day on the outstanding surplus.
- 5.4 To date we have had no response from the government with regard to our letter of April 25, 2001. a meeting is scheduled between the Trustees and the Minister of Finance for 10:00 a. m. Friday, May 11, 2001.

6.0 ISSUES RELATING TO LIFE OF JAMAICA

There are three issues presently outstanding

- 6.1 Unclaimed receipts by beneficiaries up to 1994 which LOJ still holds. Beneficiaries should be aware of this as LOJ continues to hold funds for beneficiaries who have not yet claimed their entitlements.

- 6.2 The above needs to be completed in order to determine the surplus (if any) that LOJ holds for the Defunct Fund. To this end the Trustees have requested from Life of Jamaica who have agreed to provide actuarial records and valuation.
- 6.3 Life of Jamaica has stated that it will take 4 months to provide the above. The Trustees have told them that this time frame is unacceptable and that this information can be provided within 3 weeks.
- 6.4 Due to the lack of cooperation from Life of Jamaica, the Trustees will write to the Chairman and Managing Director of the company regarding this matter.